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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

- - - - -		
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CRIMINAL CASE NO.
	)	2:09cr00070
v.	)	
	)	
SHAWN F. ENGLE,	)	
also known as Shawn Forrest	)	
Engle,	)	
	)	
Defendant.	)	
- - - - -		

TRANSCRIPT OF PROCEEDINGS  
(Guilty Plea)  
  
Norfolk, Virginia  
  
August 31, 2009

BEFORE: THE HONORABLE ROBERT G. DOUMAR,  
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE  
By: Robert J. Krask, Esquire  
Assistant United States Attorney  
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE  
By: Richard J. Colgan, Esquire  
Larry M. Dash, Esquire  
Assistant Federal Public Defender  
Counsel for the Defendant

1 (The hearing commenced at 10:02 a.m.)

2 THE CLERK: Criminal case 2:09cr70, the United  
3 States of America v. Shawn F. Engle, also known as Shawn  
4 Forrest Engle.

5 Mr. Krask, is the government ready to proceed?

6 MR. KRASK: The United States is ready.

7 Good morning, Your Honor.

8 THE COURT: Good morning, Mr. Krask.

9 THE CLERK: Mr. Colgan, Mr. Dash, is the defendant  
10 ready to proceed?

11 MR. COLGAN: The defendant is ready, Judge. Good  
12 morning.

13 THE COURT: Good morning.

14 Mr. Engle, would you come forward to the podium.  
15 And you can sort of rest your hands on that podium.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Engle, before accepting your plea of  
18 guilty in this matter I want to inform you of your rights, be  
19 satisfied that you understand them and that you're entering  
20 the pleas of guilty freely and voluntarily, with a full  
21 understanding of what your rights are.

22 You're to be sworn to answer questions which I  
23 propose to put to you in order to be certain that you know  
24 what your rights are and that you're indeed guilty of the  
25 offenses to which you are pleading. I intend to question you

1 under oath, on the record, in the presence of your lawyer,  
2 about the offenses to which you are pleading as well as other  
3 matters, and your answers, if untrue and material to these  
4 proceedings, may later be used against you in a prosecution  
5 for perjury or false statement, if they are untrue.

6 Do you understand that the Court may question you  
7 along these lines?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you further understand that the  
10 answers, if untrue, may be used in a prosecution for perjury  
11 or false statement?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Would you please swear Mr. Engle.

14 (The defendant was sworn by the clerk.)

15 THE COURT: Your correct name is Shawn, S-H-A-W-N,  
16 F, Engle, E-N-G-L-E, and you are the person named in the  
17 pending indictment in the United States District Court for  
18 the Eastern District of Virginia, Norfolk Division, Criminal  
19 Action No. 2:09cr70. Is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you're over the age of 21.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And how far did you go in school,  
24 Mr. Engle?

25 THE DEFENDANT: I graduated from high school with a

1 diploma and also completed a vocational tech school.

2 THE COURT: So you're able to read, write, and speak  
3 the English language and understand what I'm saying to you  
4 now.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: As you stand there, are you under the  
7 influence of any drugs, narcotic, marijuana or alcohol?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever been treated for any  
10 mental illness or addiction to narcotic drugs of any kind?

11 THE DEFENDANT: Yes, sir, as a child.

12 THE COURT: As a child? What were you treated for?

13 THE DEFENDANT: For anger and depression issues.

14 THE COURT: And are you suffering from any now?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you received a copy of the  
17 indictment pending against you in this case -- that is, the  
18 written charges made against you in this case -- and have you  
19 discussed those charges and the case in general with your  
20 attorneys?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Under the criminal information --  
23 criminal information? I thought it was a superseding  
24 indictment.

25 LAW CLERK: It's a superseding indictment.

1           THE COURT: All right. Under the superseding  
2 indictment you're charged with transporting or dealing in  
3 child pornography, in violation of Title 18, United States  
4 Code, Section 2252A(a) (2) (A). In order for you to be  
5 convicted of this offense the government would have to prove  
6 beyond a reasonable doubt, in Count One, that you knowingly  
7 used, persuaded, induced or enticed a known female minor,  
8 under the age of 18, to engage in sexually explicit conduct  
9 for the purpose of producing any visual depiction of such  
10 conduct, when you knew and had reason to know that such  
11 visual depiction would be and later was transported by you in  
12 interstate commerce into the Eastern District of Virginia, in  
13 violation of Title 18, United States Code, Sections 2251(a)  
14 and 2251(e).

15           In order to convict you of the offense charged in  
16 Count One the government would have to prove the following  
17 essential elements of the offense beyond a reasonable doubt:

18           1. That you used or persuaded or induced or enticed  
19 or coerced a female minor to engage in sexually explicit  
20 conduct;

21           2. That the aforementioned female minor was under  
22 the age of 18 at that time;

23           3. That you voluntarily and intentionally did this  
24 for the purpose of producing a visual depiction of such  
25 conduct;

1           4. That you knew or had reason to know that the  
2 visual depiction would be mailed or transported across state  
3 lines or that the visual depiction was mailed or actually  
4 transported across state lines.

5           The penalty provided by law for violating Count One  
6 is a term of imprisonment of not less than 15 years and not  
7 more than 30 years, and a fine not to exceed \$250,000, a  
8 special assessment of \$100, and registration as a sex  
9 offender for 15 years, and not less than five years of  
10 supervised release.

11           Count Four provides that you tampered with a witness  
12 in violation of Title 18, United States Code, Section 1512  
13 (b) (2) (B) .

14           In order to convict you of the offense charged in  
15 Count Four the government would have to prove the following  
16 essential elements of the offense beyond a reasonable doubt:

17           That you knowingly and corruptly persuaded the  
18 person named in the indictment, C. R., or attempted to do so,  
19 or engaged in misleading conduct toward C. R.; that you acted  
20 with the intent to hinder, delay, or prevent C. R. from  
21 communicating to law enforcement authorities information  
22 relating to the commission or possible commission of the  
23 offense; that the offense you were trying to persuade them to  
24 mislead was a federal offense, and that you believed that the  
25 person referenced in the indictment, C. R., might communicate

1 with federal authorities, and that you knew that this was  
2 wrong or illegal.

3 The penalty provided by law for violating Count Four  
4 is a term of imprisonment of not more than 20 years, a fine  
5 not exceeding \$250,000, or both, a special assessment of  
6 \$100, and not more than three years of supervised release.

7 Do you understand what the government would have to  
8 prove and the seriousness of the penalty provided by law for  
9 Count Four?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Count Six provides that you enticed a  
12 minor to engage in sexual activity in violation of Title 18,  
13 United States Code, Section 2422(b).

14 In order to convict you of the offense charged in  
15 Count Six the government would have to prove the following  
16 essential elements of the offense beyond a reasonable doubt:

17 First, that in the Eastern District of Virginia;  
18 second, that you used a means of facility of interstate  
19 commerce -- and that is you crossed the line -- third, to  
20 knowingly persuade, induce, entice or coerce a person younger  
21 than 18 years of age; fourth, to engage in sexual activity;  
22 fifth, that engaging in such sexual activity would be a  
23 criminal offense, in violation of South Carolina Code Section  
24 16-6.655(B) (1) or South Carolina Code Section 16-15-140.

25 The penalty provided by law for violating Count Six

1 is a term of imprisonment of at least ten years and a fine  
2 not exceeding \$250,000, a special assessment of \$100,  
3 registration as a sex offender for 25 years, and not more  
4 than five years of supervised release.

5 Do you understand what the government would have to  
6 prove and the seriousness of the penalty provided by law?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In relation to all three of these  
9 offenses, some part or portion of those offenses must have  
10 occurred in the Eastern District of Virginia.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In relation to the maximum sentence that  
14 the Court may impose, you may have heard of guidelines  
15 relative to the sentence. The Court advises you that it may  
16 take into consideration all your activities in sentencing  
17 you, including activities for which you are not charged and  
18 activities for which charges or indictments have been or are  
19 being dismissed.

20 Do you understand that the Court may take into  
21 consideration all of your activities in determining whether  
22 or not to impose the maximum punishment? Do you understand  
23 that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that in addition to



1 any fine or prison sentence that the Court may impose in this  
2 case you may be required to make restitution and to  
3 compensate any victim who has suffered a loss caused by any  
4 of the acts for which you are pleading guilty? Restitution  
5 is not limited only to the victims' actual loss, such as  
6 moneys or property stolen or damaged, if indeed there were  
7 any, and the return thereof, but includes restitution for  
8 such things as medical expenses and psychiatric expenses or  
9 other expenses and lost wages, where the victim and other  
10 victims may have been injured or suffered mental or other  
11 types of damages.

12 Thus, any person who has suffered as a result of the  
13 acts for which you are pleading guilty today may be the  
14 subject of a restitution order, and that restitution order  
15 may be made a part of your sentence and would have the effect  
16 of a judgment against you. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that the Court may  
19 require you to forfeit certain property to the government if  
20 it was obtained with the proceeds of this illegal activity or  
21 if it was used to commit this illegal activity? In this  
22 case, especially the camera and the inserts into said camera.  
23 Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: It may also include anything other than

1 that that you used to facilitate the commission of this  
2 activity. Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The offense to which you are pleading is  
5 a felony. If your plea is accepted, you will be judged  
6 guilty of the offense, and such judgment may deprive you of  
7 valuable civil rights such as the right to vote, the right to  
8 hold public office, the right to serve on a jury, and the  
9 right to possess a firearm.

10 Do you understand you would lose these rights? Do  
11 you understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Additionally, do you understand that the  
14 cost of your prosecution or the cost of your incarceration,  
15 supervision or probation, if any, may also be assessed  
16 against you should I determine you have the funds with which  
17 to pay the same? Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that in addition to  
20 any fine, forfeiture, cost of prosecution, incarceration,  
21 supervision or probation you will be required to pay a  
22 special assessment of \$300; that is, a hundred dollars on  
23 each count, which is to apply to court costs? And this is  
24 required whether or not you have the ability to pay or not.  
25 Do you understand that, sir?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: Now, there may be a period of supervised  
3 release in addition to any sentence this Court imposes. The  
4 period of time under this statute is five years to life.  
5 Your failure to abide by the conditions of supervised release  
6 may subject you to an additional period of confinement not in  
7 excess of the total number of years of originally imposed  
8 supervised release; thus, if you were sentenced to jail for  
9 this charge -- and you will be -- then once you are released  
10 from jail you would be placed on supervised release for up to  
11 five years to life. If you violate the terms and conditions  
12 of supervised release, you could then be sent back to jail  
13 for as long as life. Do you understand that, sir?

14          THE DEFENDANT: Yes, sir.

15          THE COURT: Do you understand that you must register  
16 as a sex offender in each jurisdiction in which you reside,  
17 are employed or are a student? Do you understand that you  
18 must keep this registration current for a period of 25 years?  
19 Do you understand that failure to comply with this  
20 registration requirement may subject you to criminal  
21 penalties under federal law and would probably be a condition  
22 of your supervised release? Do you understand that you  
23 cannot violate this? Do you understand that, sir?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Now, have you read the plea agreement?

1 THE DEFENDANT: I have.

2 THE COURT: Has your lawyer -- have your lawyers --  
3 you have two lawyers in this case. Is that correct, sir?

4 THE DEFENDANT: That's correct, sir.

5 THE COURT: And have they both gone over the plea  
6 agreement with you?

7 THE DEFENDANT: They have.

8 THE COURT: Have they fully explained the plea  
9 agreement to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Pierce, if you would be so kind.

12 Mr. Pierce is handing you a document, Mr. Engle.  
13 Would you look at this document and tell me if this is the --  
14 what that is?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What is it?

17 THE DEFENDANT: This is the plea agreement which I  
18 have agreed to.

19 THE COURT: And have you executed it -- that is,  
20 signed it -- and initialed all the other pages of the  
21 agreement, sir?

22 THE DEFENDANT: I have, sir.

23 THE COURT: And, Mr. Colgan, have you initialed all  
24 the pages and executed this agreement?

25 MR. COLGAN: I have, Judge.

1           THE COURT: I didn't know if -- Mr. Dash, you didn't  
2 sign it, did you?

3           MR. DASH: I did, Judge.

4           THE COURT: Oh, you did?

5           MR. DASH: I initialed it and signed it.

6           THE COURT: All right. Both of you have signed it.

7           All right. Mr. Engle, if you would hand it to  
8 Mr. Dash, he'll hand it to Mr. Krask.

9           Mr. Krask, on behalf of the United States Attorney  
10 have you executed this agreement and initialed all the pages?

11          MR. KRASK: Yes, Your Honor, I have.

12          THE COURT: All right. Mr. Pierce, if you would get  
13 it from Mr. Krask.

14          Mr. Engle, I'm ordering this plea agreement filed,  
15 subject to the acceptance of a plea of guilty to these  
16 charges.

17          I want to emphasize to you that you don't have to  
18 plead guilty. I want to emphasize to you that you can change  
19 your mind right now and say, "Look, I don't want to plead  
20 guilty," and these proceedings and that agreement cannot be  
21 used against you. Do you understand that?

22          THE DEFENDANT: I do, sir.

23          THE COURT: Excuse me.

24          Mr. Colgan, have we got that addition to the plea  
25 agreement in here?

1           MR. COLGAN: Judge, the -- you have the final,  
2 Judge.

3           THE COURT: I do?

4           MR. COLGAN: Yes, sir.

5           THE COURT: All right. Have we got the factual  
6 situation straight? Because the word "corruptly" was not in  
7 there.

8           MR. KRASK: Yes, Your Honor, we added that.

9           THE COURT: All right. Thank you.

10           In the plea agreement, Mr. Engle, it contains a  
11 clause whereby you agree to a specific sentence range within  
12 a range of 180 to 240 months, a lifetime period of supervised  
13 release and a special assessment which you agree would  
14 constitute an appropriate disposition of the case. You can  
15 do this under the Federal Rules of Civil Procedure, which is  
16 under Rule 11.

17           This agreement is binding only if the Court accepts  
18 the plea agreement and will so sentence you in accordance  
19 therewith. If the Court doesn't accept the plea agreement,  
20 you will be entitled to a trial, and you can withdraw this  
21 agreement.

22           My tendency is to -- when everyone agrees under  
23 certain circumstances, is to accept certain plea agreements  
24 under 11(c)(1)(C), which is a fixed sentence agreement. This  
25 particular agreement is not a fixed sentence in the sense

1 that it leaves some leeway; that is, between 180 and  
2 240 months. And my tendency is to accept it. Generally,  
3 however, in a case of this nature I would defer a decision as  
4 to whether the sentence agreed upon by the parties represents  
5 the appropriate disposition of the case until I have received  
6 a presentence report, because I don't know what your prior  
7 history is, Mr. Engle, and I want to look at that.

8 The presentence report will be prepared by the  
9 Probation Office prior to any sentencing hearing. Therefore,  
10 I don't want to accept the plea agreement at this time. I  
11 want to tell you that. I will tell you that I have been  
12 accepting them, and unless something unusual occurs I will  
13 accept the plea agreement for the fixed sentence.

14 If I reject the plea agreement, and if I feel that  
15 the agreement by the parties does not represent the  
16 appropriate disposition of the case, I will advise the  
17 defendant that you're not required to follow the plea  
18 agreement and that you can withdraw your plea of guilty. The  
19 plea of guilty can be withdrawn, and we can proceed to trial.

20 The plea agreement, however, is going to be filed  
21 subject to the acceptance of a plea of guilty. I again  
22 emphasize you have an absolute right to plead not guilty, and  
23 since you have previously entered a plea of not guilty that  
24 you have a right to persist in that plea.

25 Do you understand that, sir?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: If you plead not guilty you will have  
3 the right to a speedy and public trial by a jury. At that  
4 trial you have the right to the assistance of a lawyer, the  
5 right to confront and cross-examine witnesses against you,  
6 and you cannot be required to incriminate yourself. Do you  
7 understand these rights?

8           THE DEFENDANT: Yes, sir.

9           THE COURT: If you pled not guilty at a trial you  
10 may not be required to testify, and any such failure to  
11 testify at a trial may not be commented upon, nor may the  
12 Court or jury draw any inference from any such failure to  
13 testify. Do you understand this right?

14          THE DEFENDANT: Yes, sir.

15          THE COURT: Now, if you plead guilty to these three  
16 counts you waive all of these rights. Do you understand  
17 that, sir?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Do you understand that if I accept your  
20 guilty plea there will be no further trial of any kind in  
21 this matter, merely a hearing to determine the sentence which  
22 will be imposed upon you. Do you understand that, sir?

23          THE DEFENDANT: Yes, sir.

24          THE COURT: Do you further understand that if you  
25 plead not guilty the United States would have the burden of



1 convincing each and every member of a jury composed of 12  
2 persons of your guilt by competent evidence beyond a  
3 reasonable doubt as to each of these three charges? Do you  
4 understand that, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that you would have  
7 the right to use the power and process of this court to  
8 compel the production of any evidence, including the  
9 attendance of any witnesses on your behalf, but if I accept  
10 your guilty plea you would lose that right. Do you  
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you persist in your desire to plead  
14 guilty to these three counts, as I explained to you at the  
15 outset, I may ask you questions about the offense, and if you  
16 answer these questions under oath, in the presence of your  
17 attorney, your answers, if untrue and material to these  
18 proceedings, may later be used against you in a prosecution  
19 for perjury or false statement, if untrue. Do you understand  
20 that the Court may question you along these lines?

21 THE DEFENDANT: I do, sir.

22 THE COURT: Every person has a right to be free from  
23 an unreasonable search by a law enforcement agent, whether  
24 federal or state, and the seizure of evidence in relation to  
25 that search. Do you feel that any of your constitutional

1 rights have been violated in any way in connection with the  
2 seizure of any physical or tangible evidence relating to your  
3 offenses by any police or other law enforcement agent,  
4 whether federal or state?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have they violated your constitutional  
7 rights?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you feel that any of your  
10 constitutional rights have been violated in any way in regard  
11 to the taking of any oral or written statement from you by  
12 any police, governmental or law enforcement agency or by  
13 anyone directly or indirectly having a connection with such  
14 agency or a person in such agency? Have they violated your  
15 constitutional rights?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anyone, including your attorney or  
18 the United States Attorney, made any promise of leniency or  
19 promise of any kind in return for a plea of guilty to these  
20 three counts other than that which is contained in the  
21 written plea agreement which has been filed herein, subject  
22 to the acceptance of a plea of guilty to each of these  
23 counts? Has any other agreement been made to you?

24 THE DEFENDANT: No, sir.

25 THE COURT: Any promises of any kind?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone threatened you in any way or  
3 used force against you to induce you to plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you understand that any  
6 recommendation by the prosecution, or any recommendation by  
7 the defense or any movement not to oppose your attorney's  
8 request for sentence is not binding upon the Court? The  
9 Court will sentence you in accordance with the agreement in  
10 the plea agreement, if the plea agreement is accepted. Do  
11 you understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you had the opportunity to discuss  
14 your case with your attorneys, Mr. Colgan and Mr. Dash?

15 THE DEFENDANT: I have, sir.

16 THE COURT: Have you discussed all of the facts in  
17 this case with your attorneys?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you satisfied that your attorneys  
20 have fully considered all of the facts and discussed with you  
21 any possible defenses that you may have to the charges  
22 against you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that there's no parole  
25 for this crime?

1           THE DEFENDANT: I do, sir.

2           THE COURT: Now, the statute under which you are  
3 charged sets forth the maximum and minimum sentences which  
4 can be imposed in these counts, and sentencing guidelines  
5 have been established which must be used to determine -- or,  
6 that is, to advise the Court in determining the actual  
7 sentence which will be imposed upon you.

8           These guidelines require the Court to take into  
9 account the actual conduct in which you were engaged,  
10 consider the victims of your offense, the role that you  
11 played, and whether or not you've engaged in any obstruction  
12 of justice or have accepted responsibility for your acts. Do  
13 you understand that?

14          THE DEFENDANT: I do, sir.

15          THE COURT: Do you understand that your criminal  
16 history or the lack thereof is an important factor in  
17 applying the advisory sentencing guidelines? Do you  
18 understand that?

19          THE DEFENDANT: Yes, sir.

20          THE COURT: Now, the Court has the right to depart  
21 upwards or downwards from the advisory sentencing guidelines  
22 and will not do so until it receives a presentence report.

23          Now, a presentence report must be prepared by the  
24 Probation Office of this court. It sets forth your personal  
25 history as well as the facts of this case. Until such a

1 report is completed, it is impossible for either the Court or  
2 for your lawyer to know what sentence range will be  
3 prescribed by the advisory guidelines.

4 In any event, if I accept the plea agreement and all  
5 the consequences of the plea agreement your sentence will  
6 still be within the range prescribed by the plea agreement.  
7 Do you understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, the Court will follow the  
10 procedures set forth in the guidelines when it determines  
11 your sentence, but I can only do that after receiving the  
12 presentence report. And it may be necessary to resolve  
13 disputed facts contained in the presentence report, and the  
14 resolution of these facts may affect the application of the  
15 advisory guidelines.

16 Have you discussed the sentencing guidelines with  
17 your attorneys, Mr. Colgan and Mr. Dash?

18 THE DEFENDANT: I have, sir.

19 THE COURT: Have they explained to you the various  
20 considerations which go into determining which advisory  
21 guideline might apply to your case?

22 THE DEFENDANT: They have.

23 THE COURT: Do you understand that at this point it  
24 is unlikely that they can be specific as to the guideline  
25 which will apply in your case because they do not have all of

1 the necessary information, since they have not seen the  
2 presentence report because it hasn't been prepared yet? Do  
3 you understand that, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that you will not be  
6 able to withdraw your plea on the ground that your lawyer's  
7 prediction as to the guideline range -- well, you can  
8 withdraw your plea at any time because I haven't accepted  
9 your plea yet, Mr. Engle. So this wouldn't apply right now.

10 But once I accept your plea agreement, if I do so  
11 after seeing the presentence report, you will not be able to  
12 withdraw your plea on the ground that your lawyer's  
13 prediction as to the guideline range within that plea  
14 agreement notification proved to be an error or inaccurate in  
15 any way. Do you understand that.

16 THE DEFENDANT: I do, sir.

17 THE COURT: Now, your plea agreement contains a  
18 clause whereby you waive your right to appeal any sentence  
19 imposed upon any ground whatsoever, so long as that sentence  
20 is within the statutory maximum.

21 Do you understand that you're giving up your right  
22 to appeal -- that is, that you, by executing the plea  
23 agreement, pleading guilty, having the Court accept that  
24 guilty plea -- and, therefore, you will not appeal any  
25 sentence imposed by this Court? Do you understand that?

1           THE DEFENDANT: I do, sir.

2           THE COURT: Now, on the other hand, the government  
3 indicates that it has a right to appeal any sentence that  
4 this Court imposes. And that's contained in the plea  
5 agreement.

6           Merely because I'm telling you what's in the plea  
7 agreement does not mean that I'm ruling on the plea  
8 agreement. I have misgivings about what's called the  
9 mutuality of remedy in contract; however, nobody seems to do  
10 anything about it. But, anyhow, I still have that problem.

11          Mr. Colgan and Mr. Dash, has the defendant been  
12 competent and able to cooperate with you in this case?

13          MR. COLGAN: He has, Judge.

14          MR. DASH: Yes, sir.

15          THE COURT: Have each of you discussed the facts of  
16 this case in detail with the defendant, Mr. Engle?

17          MR. COLGAN: I have, Judge.

18          MR. DASH: Yes, sir.

19          THE COURT: Are each of you satisfied that there are  
20 no meritorious defenses that the defendant might raise in  
21 this case which in your opinion would result in a not guilty  
22 verdict by a jury to any one of these three counts?

23          MR. COLGAN: Yes, Your Honor.

24          MR. DASH: Yes, sir.

25          THE COURT: Are you satisfied that the defendant

1 Mr. Engle's constitutional rights have been observed  
2 heretofore in this case?

3 MR. COLGAN: Yes, Judge.

4 MR. DASH: Yes, Your Honor.

5 THE COURT: Are you satisfied that as the defendant,  
6 Mr. Engle, stands before the bar today that he's not under  
7 the influence of any drugs, narcotic, marijuana or alcohol?

8 MR. COLGAN: Yes, sir.

9 MR. DASH: Yes, sir.

10 THE COURT: Do either of you know of any reason of  
11 any nature which would prevent the defendant, Mr. Engle, from  
12 pleading guilty to these three counts of the indictment?

13 MR. COLGAN: No, sir.

14 MR. DASH: No, Your Honor.

15 THE COURT: Now, Mr. Engle, what I'm going to do is  
16 to take the indictment and to read to you each count, and  
17 then I'm going to ask you how you plead.

18 I want to emphasize to you that you still have an  
19 absolute right to plead not guilty, and these matters  
20 contained here today can't be used against you. Do you  
21 understand that? It will be as if they never took place. Do  
22 you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. This is the superseding  
25 indictment:



1           In the United States District Court for the Eastern  
2 District of Virginia, Norfolk Division, United States of  
3 America v. Shawn F. Engle, Criminal Action No. 2:09cr70. It  
4 was handed down in the August, 2009, term in Norfolk,  
5 Virginia.

6           At all times material to this indictment, defendant  
7 Shawn F. Engle, who was then approximately 30 years old, used  
8 instrumentalities of interstate and foreign commerce to meet  
9 and to communicate with two teen-age girls, among others.

10           2. KM, a minor, who was approximately 13 years old  
11 when she and the defendant Shawn F. Engle, began  
12 communicating with one another. She lived outside of the  
13 Commonwealth of Virginia.

14           AM, a minor who was approximately 16 to 17 years old  
15 when she and the defendant Shawn F. Engle began communicating  
16 with one another, lived outside of the Commonwealth of  
17 Virginia.

18           4. Defendant Shawn F. Engle communicated with KM  
19 and A. M. in interstate commerce using the telephone,  
20 telephone text messages, the United States mails, and by  
21 computer and Internet.

22           5. On or about April 16, 2008, and on or about  
23 April 25 through 27, 2008, defendant Shawn F. Engle traveled  
24 in interstate commerce to Pennsylvania to meet A. M.

25           On or about August 30th, 2008, defendant Shawn F.

1 Engle traveled in interstate commerce to South Carolina to  
2 meet KM and brought her to Virginia Beach.

3 On or about October 24, 2008, defendant Shawn F.  
4 Engle was arrested in Virginia Beach pursuant to a South  
5 Carolina arrest warrant charging him with kidnapping KM

6 On or about October the 27th, 2008, defendant Shawn  
7 F. Engle was also charged in Virginia Beach with having  
8 carnal knowledge, without the use of force, of KM, a  
9 13-year-old child, and with abducting KM, a child under the  
10 age of 16, for the purpose of concubinage or prostitution.

11 8. The general allegations contained in paragraphs  
12 1 through 7 above are hereby realleged and incorporated by  
13 reference into Counts One through Fourteen below, as if fully  
14 set forth therein.

15 Count One:

16 On or about April 25th through April 27th, 2008, in  
17 the Eastern District of Virginia and elsewhere, defendant  
18 Shawn F. Engle did knowingly use, persuade, induce and entice  
19 a female minor under the age of 18 -- that's A. M. -- to  
20 engage in sexually explicit conduct for the purpose of  
21 producing any visual depiction of such conduct, when the  
22 defendant Shawn F. Engle knew and had reason to know that  
23 such visual depiction would be, and later was, transported by  
24 him in interstate commerce into the Eastern District of  
25 Virginia between on or about April 27, 2008, and October the

1 24th, 2008, and which visual depiction was produced using  
2 materials that had been mailed, shipped and transported in  
3 interstate and foreign commerce.

4 To this Count One of the indictment, sir, how do you  
5 plead?

6 THE DEFENDANT: I plead guilty, sir.

7 THE COURT: Are you entering this plea of guilty  
8 freely and voluntarily, Mr. Engle?

9 THE DEFENDANT: I am, sir.

10 THE COURT: Are you pleading guilty because you are  
11 in fact guilty of the offense charged contained in Count One  
12 of this indictment?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Count Four:

15 On or about February 17, 2009, in Virginia Beach in  
16 the Eastern District of Virginia, the defendant Shawn F.  
17 Engle did knowingly and corruptly persuade and attempt to  
18 persuade another person and engage in misleading conduct  
19 toward another person, namely C. R., with intent to hinder,  
20 delay and prevent the communication to a law enforcement  
21 officer of information relating to the commission and  
22 possible commission of a federal offense by defendant Shawn  
23 F. Engle; that is, in a letter dated February 15, 2009,  
24 falsely purporting to be from Drake Elizabeth (sic) to C. R.,  
25 defendant Shawn F. Engle wrote, among other things:

1           "Hey, what's up, brother? Just got off the phone  
2 with you, yeah, and I really gotta watch what I say on this  
3 phone because they listen and record everything to use  
4 against me. It sucks, you're right, life really sucks now  
5 compared to before. Definitely don't mention my names on the  
6 phone. LOL. Yeah, I think they take all my mail here  
7 'cause I don't get any. Yeah, the detective and FBI lady Kim  
8 Wright are pretty much going to everyone on my phone and  
9 visiting list, lieing trying to get anyone to say something  
10 about KM or seeing her in Virginia or with me. Yeah, no one  
11 has seen her in Virginia because she's never been to  
12 Virginia, none of my friends know her, have ever seen her, or  
13 know anything about her. That's all our statements. Her  
14 statement and mine state she's never been in Virginia. Yeah  
15 and the Russians are backing me, they come to visit, talk to  
16 me on the phone, just the cops lying to try to turn people  
17 against me. Just sucks. My friends are loyal though...  
18 Yep. Yep. Best thing to do is not know anything about any  
19 of this that's going on you know. Yeah, they can't find  
20 anyone to testify anything about her, no one's seen her  
21 around me, and she says she's never been to Virginia, so my  
22 lawyer thinks I'll get out in March and be able to sue the  
23 police for false charges."

24           In violation of Title 18, United States Code.

25           To Count Four of this indictment how do you plead,

1 sir?

2 THE DEFENDANT: Guilty, sir.

3 THE COURT: Are you entering this plea of guilty  
4 freely and voluntarily, Mr. Engle?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you pleading guilty to Count Four  
7 because you're indeed guilty of Count Four?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Count Six:

10 On or about December 22nd, 2008, in Virginia Beach  
11 in the Eastern District of Virginia and elsewhere, defendant  
12 Shawn F. Engle did knowingly use the mails to attempt and to  
13 knowingly persuade, induce and entice a female minor, KM,  
14 under the age of 18, to engage in sexual activity for which  
15 the defendant Shawn F. Engle could be charged with a criminal  
16 offense; namely, the violation of:

17 (a) South Carolina Code, Section 16-3-655(B) (1),  
18 prohibiting knowingly engaging in sexual battery, including  
19 sexual intercourse and cunnilingus, with a minor (KM) who was  
20 then between the age of 11 and 14; and

21 (b) South Carolina, Section 16-15-140, prohibiting a  
22 person over the age of 14 from willfully and lewdly  
23 committing and attempting to commit a lewd and lascivious act  
24 upon and with the body of a child (KM) under the age of  
25 16 years, with the intent of arousing, appealing to, and

1 gratifying the lust, passions, and sexual desires of himself  
2 and the child; that is, the defendant Shawn F. Engle mailed a  
3 letter dated December 20th, 2008, to KM's home addressed in  
4 South Carolina with the greeting "Dear Supergirl" in  
5 violation of Title 18, United States Code, Section 2422(b).

6 To Count Six of this document, sir, how do you  
7 plead?

8 THE DEFENDANT: Guilty.

9 THE COURT: Are you entering this plea of guilty  
10 freely and voluntarily, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you pleading guilty because you are  
13 in fact guilty of the offense for which you are charged in  
14 Count Six of this indictment?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Krask -- you can have a seat,  
17 Mr. Engle.

18 Mr. Krask, would you please recite the facts which  
19 you expect the government would have shown in this case  
20 relating to the offenses to which the defendant has pled  
21 guilty?

22 MR. KRASK: Yes, Your Honor. May I speak to  
23 Mr. Colgan for just one moment, sir?

24 THE COURT: Yes, you may.

25 (There was a pause in the proceedings.)

1           MR. KRASK: Your Honor, there's one correction we  
2 need to make on the statement of facts. If we may have the  
3 original, I'd like to address that now.

4           THE COURT: All right. Mr. Pierce...

5           MR. KRASK: Thank you.

6           (There was a pause in the proceedings.)

7           THE COURT: Mr. Dash, would you get over there and  
8 look, too.

9           MR. DASH: Yes, sir.

10          THE COURT: Thank you.

11          MR. KRASK: I apologize for the inconvenience, Your  
12 Honor.

13          THE COURT: Don't worry about it, Mr. Krask.

14          (There was a pause in the proceedings.)

15          THE COURT: All right, Mr. Krask, go ahead. You  
16 better keep the original and make sure you're reading from  
17 the original.

18          MR. KRASK: Okay. That is probably a good idea.  
19 Thank you, sir.

20                 And, just for the record, Mr. Colgan called me  
21 before court this morning, and, based on some discussions  
22 that we had had, he had asked me to take certain language out  
23 of the statement of facts that we had put in at his request.  
24 So we took it back out, and there was one clause that I had  
25 neglected to take out, thinking that it was in the original

1 statement of facts, and Mr. Colgan advised me that it wasn't.  
2 So that's the reason for the change.

3 THE COURT: All right. I don't care what the reason  
4 for the change is. I want to hear the statement of facts.

5 MR. KRASK: Yes, Your Honor.

6 If this matter had gone to trial, the United States  
7 would have proven the charges contained in Counts One, Four,  
8 and Six of the superseding indictment beyond a reasonable  
9 doubt by proof of the following facts, among others:

10 After meeting a Pennsylvania minor with the initials  
11 A. M. on the Internet in 2008 and then communicating with her  
12 by telephone text messages, defendant Shawn F. Engle traveled  
13 to Pennsylvania on two occasions in April, 2008, to visit  
14 her.

15 THE COURT: What it didn't say here -- excuse me --  
16 is that at the time he was living in Virginia Beach, I take  
17 it? Or he traveled from someplace.

18 MR. KRASK: He was living in Virginia Beach and in  
19 Gates County, North Carolina, but with respect to these trips  
20 he did travel from Virginia Beach.

21 THE COURT: So he traveled either from Virginia  
22 Beach or North Carolina to Pennsylvania, correct?

23 MR. KRASK: He travelled with respect to both trips  
24 from Virginia Beach to Pennsylvania and then back.

25 THE COURT: Is that correct, Mr. Engle?



1           THE DEFENDANT: The first trip I traveled from Gates  
2 County, North Carolina. The second trip I picked up a  
3 friend's car from Virginia Beach and brought it back to North  
4 Carolina, but the original trip was made from my house in  
5 North Carolina, sir.

6           THE COURT: But you went to Pennsylvania?

7           THE DEFENDANT: I did, sir.

8           THE COURT: All right. Thank you, Mr. Engle.

9           Go ahead, Mr. Krask. Excuse me for interrupting  
10 you. Go ahead.

11           MR. KRASK: On his first visit to Pennsylvania, Your  
12 Honor, on April 16, 2008, Engle picked up the minor from her  
13 high school, took her to a motel and provided her with  
14 alcohol -- excuse me one moment, Your Honor.

15           (There was a pause in the proceedings.)

16           MR. KRASK: -- and according to Engle engaged in  
17 sexual activity. Nine days later Engle returned to  
18 Pennsylvania on the weekend of April 25th through 27th, 2008.  
19 He again picked up the then 17-year-old minor, provided her  
20 with alcohol, and took her to a motel room and encouraged and  
21 induced her to engage in sexual activity. Engle used a video  
22 camera that he brought along for the trip to film the minor  
23 engaging in sexual acts with him, which acts constituted  
24 sexually explicit conduct as defined in Title 18, United  
25 States Code, Section 2256(2). Defendant Engle then returned

1 with the video camera to the Eastern District of Virginia, as  
2 charged in Count One of the superseding indictment.

3 On October 24, 2008, in Virginia Beach, Virginia,  
4 investigators with the Virginia Beach --

5 THE COURT: Slow down a minute.

6 MR. KRASK: Yes, sir.

7 (There was a pause in the proceedings.)

8 THE COURT: Go ahead.

9 MR. KRASK: On October 24th, 2008, in Virginia  
10 Beach, Virginia, investigators with the Virginia Beach Police  
11 Department recovered the video camera from defendant Engle's  
12 vehicle, following his arrest upon an outstanding warrant  
13 from South Carolina. Investigators searched the camera  
14 pursuant to a court-authorized warrant and found that it  
15 contained an SD memory card which contained the  
16 above-described video involving the minor and defendant  
17 Engle.

18 Months before his October, 2008 arrest, defendant  
19 Engle also entered into a personal relationship with another  
20 minor with the initials KM who lived in South Carolina and  
21 was 13 years old at the time of the events described herein.  
22 On August 30, 2008, defendant Engle traveled to South  
23 Carolina and picked up this minor, who was running away from  
24 home after a family crisis. Defendant Engle then brought  
25 this minor to a house on Westgrove Road in Virginia Beach

1 where he occasionally stayed with acquaintances. While  
2 there, Engle introduced this minor to his acquaintances as  
3 his "girlfriend." Approximately one week later Engle  
4 transported the minor to his mother's house in Gates County,  
5 North Carolina, where the minor was eventually recovered by  
6 Gates County authorities on or about September 16, 2008.

7           Following his late October, 2008 arrest, defendant  
8 Engle was charged in Virginia Beach with having carnal  
9 knowledge of KM and with abducting her for immoral purposes.  
10 While detained and awaiting trial, Engle learned that the FBI  
11 was investigating him for violating federal law and wrote the  
12 letter described in Count Four and dated February 15, 2009,  
13 to a friend who knew of Engle's relationship with KM Engle  
14 disguised this letter by sending it in an envelope that  
15 contained a return address naming another Virginia Beach  
16 inmate as the sender. In the letter Engle told the friend  
17 about the FBI investigation and knowingly attempted to  
18 corruptly persuade the friend not to tell the FBI what he  
19 knew about Engle's involvement with KM with the intent to  
20 hinder, delay, and prevent the communication to a federal law  
21 enforcement officer of information related to the commission  
22 of a federal offense. Instead, defendant Engle suggested  
23 that the friend falsely indicate that he knew nothing about  
24 KM or her presence in Virginia.

25           Defendant Engle also wrote letters from the Virginia

1 Beach City Jail and sent them via U.S. Mail to KM in South  
2 Carolina, as noted, for example, in Count Six. South  
3 Carolina investigators recovered one such letter dated  
4 December 20, 2008, from KM's home in South Carolina. In this  
5 letter, defendant Engle attempted to induce and to entice KM,  
6 who he then knew was 13 years old, to engage in sexual  
7 activity that, if consummated, could have resulted in Engle's  
8 prosecution for violating the South Carolina laws set forth  
9 in Count Six. In the letter the then 31-year-old Engle  
10 discussed: 1) his love for his "baby girl" and about how  
11 "sexy hot" she was; 2) his plans for immediately returning to  
12 South Carolina to his "soul mate" if his charges were  
13 dismissed at an upcoming preliminary hearing in early  
14 January, 2009, and how he "never wants to be apart from her  
15 ever;" 3) how much he liked shaving and licking her and that  
16 he wants to "kiss and lick her all over;" 4) how great things  
17 would be when they were married; and 5) how, because he had  
18 been "unexploded for three months" it would be "incredible"  
19 when he returned back to KM

20 THE COURT: One question I have. In the indictment,  
21 in Count One, it stated "...which visual depiction was  
22 produced using materials that had been mailed, shipped and  
23 transported in interstate and foreign commerce."

24 Was the camera that was used to depict this  
25 particular incident in Pennsylvania mailed, shipped or

1 transported in interstate and foreign commerce prior to the  
2 depiction being made?

3 MR. KRASK: Yes. The camera was manufactured  
4 outside the United States, and if I may check with the agent  
5 I believe it was in China -- in China.

6 THE COURT: The camera was made in China?

7 MR. KRASK: Correct. And, also, Your Honor --

8 THE COURT: Is that correct, Mr. Engle -- or Mr. --  
9 Engle?

10 MR. COLGAN: Judge, that's what we understand from  
11 discovery material that we received.

12 THE COURT: All right. And those would be in the  
13 facts. Okay.

14 MR. KRASK: Your Honor, may I just ask a couple  
15 questions I had that I wanted to clarify for the record to  
16 make sure that everything is --

17 THE COURT: Right.

18 MR. KRASK: -- done by the book here today?

19 With respect to Count One, the Court has read it  
20 several times to the defendant. I don't think there's an  
21 issue, but initially the Court referred to it as a charge  
22 relating to the receiving, transporting and shipping of child  
23 pornography, and the charge is really sexual exploitation of  
24 a minor.

25 THE COURT: That's what it really is. I shouldn't

1 have said that, but it is sexual exploitation of a minor.

2 MR. KRASK: Thank you.

3 And with respect to Count Four initially the Court  
4 referred to the violation charged as being Title 18, United  
5 States Code, Section --

6 THE COURT: It's a long section.

7 MR. KRASK: Yes, 1512(b)(2)(B), and it's Section  
8 (b)(3). And, again, you read it to Mr. Engle. I think he  
9 understands the charge, but --

10 THE COURT: All right. Do you understand the  
11 charges, Mr. Engle?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 MR. KRASK: And finally -- I'm sorry, Your Honor.  
15 Just one last one and I'll sit down.

16 With respect to Count Six -- and I, frankly, may  
17 have missed this -- you indicated the minimum was -- that he  
18 faces -- the minimum penalty of ten years, but did the Court  
19 ask -- or indicate that the maximum was up to life?

20 THE COURT: The maximum is life, but you've agreed  
21 to a specific sentence in relation to this matter between 180  
22 and 240 months. Isn't that correct?

23 MR. KRASK: That is correct, Your Honor.

24 THE COURT: All right. Mr. Engle, you've heard the  
25 facts read and the additional statements made. Are these

1 facts true, Mr. Engle?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And in which event, Mr. Engle, I'm still  
4 going to wait for the presentence report. Because I have no  
5 idea what his prior record is or what Mr. Engle may have been  
6 involved in. Although I place great stress in what the  
7 United States Attorney does, I just want to see it for  
8 myself. I hope counsel understand that.

9 Based on that, I'll make a determination at the --  
10 prior to sentencing -- at the time of sentencing whether to  
11 accept the guilty plea or not, Mr. Krask.

12 MR. KRASK: Yes, Your Honor.

13 THE COURT: All right. Mr. Engle, we've got to set  
14 a sentencing date.

15 November the 9th, 2009, at 11:00 a.m. in Norfolk,  
16 Virginia. Is that agreeable with you, Mr. Colgan and  
17 Mr. Dash?

18 MR. DASH: Yes, sir.

19 MR. COLGAN: It is, Judge.

20 THE COURT: Mr. Krask, is that agreeable with you?

21 MR. KRASK: Yes, it is.

22 THE COURT: Now, Mr. Engle -- and I always require,  
23 and Mr. Colgan and Mr. Dash have always attended any  
24 interview of you conducted by the Probation Office, and I'm  
25 going to ask one of you to be present at any interview of you

1 conducted by the Probation Office. And I'll tell the  
2 Probation Office, do not interview Mr. Engle without the  
3 presence of either Mr. Colgan or Mr. Dash at such an  
4 interview under any circumstances unless you have permission  
5 of the Court. And I'm not about to give any permission  
6 unless the circumstances are really exemplary that would  
7 require something.

8 Mr. Engle, a probation report will be -- a  
9 presentence report will be prepared by the court personnel.  
10 This presentence report will be available 35 days before  
11 sentencing. Mr. Colgan or Mr. Dash will go over it with you.  
12 You are to go over it and see if there's anything that you  
13 feel is incorrect, because then they have a duty to try to  
14 correct any matters contained in the presentence report with  
15 the opposing counsel and with the Probation Office. If they  
16 can't get them to agree, then they must file certain  
17 documents.

18 Seven days before sentencing they've got to file a  
19 position paper with regard to sentencing. All of this is  
20 contained in the sentencing procedures order. You'll be  
21 given a copy of this sentencing procedures order, so you'll  
22 know what their duties are as well as what the duties of the  
23 government are and everyone else concerned, including the  
24 Probation Office. So you'll be given a copy of it, and  
25 you'll be asked to sign a receipt for such a copy. And I'm



1 entering this order at the present time.

2 Mr. Pierce, the court security officer, will take  
3 it, and we'll get everybody to sign a receipt.

4 (There was a pause in the proceedings.)

5 THE COURT: I want to ask while we're still here.  
6 Mr. Krask, I notice you took out of the presentence report  
7 any engagement in sexual -- let me see. What was it?

8 That is, on August the 30th he traveled to South  
9 Carolina, and he brought this young lady to Westgrove Road in  
10 Virginia Beach. And you took out the part that he engaged in  
11 sexual activity and intercourse with her?

12 MR. KRASK: Yes, Your Honor.

13 THE COURT: All right. I -- okay.

14 Anything else need be done in this matter?

15 MR. DASH: No, Your Honor.

16 MR. COLGAN: No, Judge.

17 THE COURT: Anything else?

18 MR. KRASK: No, Your Honor.

19 THE COURT: All right. We'll recess until noon.

20 (The hearing adjourned at 11:02 a.m.)  
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CERTIFICATION

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s/s

Heidi L. Jeffreys

September 21, 2010

Date